

**SUMMER VILLAGE OF NORGLLENWOLD
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING AND DECISION
DECEMBER 11, 2018**

CALL TO ORDER

The Chair called the hearing to order at 10:00 a.m.

The following people were in attendance:

Chair:	Jeff Ludwig
Member at large:	Allan MacPherson
Member at large:	Carol McMillan
Development Officer:	Koralyn Lemmon
CAO:	Phyllis Forsyth
SDAB Secretary:	Teri Musseau
Applicants:	Chad Tallon Michael Keyes
Staff:	Kara Kashuba Tanner Evans

PURPOSE OF THE HEARING

The purpose of this hearing is to hear an appeal received from Chad Tallon on September 25, 2018, appealing the Municipal Planning Commission's decision of August 27, 2018, to deny a development permit for construction of two sets of stairs on the property located at Lot 6, Block 1, Plan 2857TR being 359 Last Chance Way and construction of retaining wall, stairs and deck on the municipal reserve Lot R1, Block 1, Plan 2857TR located in front of 359 Last Chance Way.

IN THE MATTER OF AN APPEAL by the appellant, Chad Tallon appealing the Municipal Planning Commission's decision of August 27, 2018 denying a development permit for construction of two sets of stairs on the property located at Lot 6, Block 1, Plan 2857TR being 359 Last Chance Way and construction of retaining wall, stairs and deck on the municipal reserve Lot R1, Block 1, Plan 2857TR located in front of 359 Last Chance Way.

BEFORE the Summer Village of Norglenwold Subdivision and Development Appeal Board:

Chairman Jeff Ludwig
Member Allan MacPherson
Member Carol McMillan

THIS IS AN APPEAL ON the Development Authority's decision of August 27, 2018.

UPON NOTICE BEING GIVEN by letter to the appellant and owners of property located within 200' radius of the adjournment for the proposed development on September 26, 2018. At the October 23, 2018 hearing the meeting was adjourned until December 11, 2018 at the request of the appellant. Notice was given by letter to the appellant and owners of property located within 200' radius of the adjournment for the proposed development on October 24, 2018

BACKGROUND

The Subdivision and Development Appeal Board Secretary advised that

Chad Tallon filed an appeal against the Municipal Planning Commission's decision of August 27, 2018 denying the application for a development permit for construction of two sets of stairs on the property located at Lot 6, Block 1, Plan 2857TR being 359 Last Chance Way and construction of retaining wall, stairs and deck on the municipal reserve Lot R1, Block 1, Plan 2857TR located in front of 359 Last Chance Way.

OBJECTIONS TO ANY MEMBERS HEARING THE APPEAL

The Secretary asked if any members of the Subdivision and Development Appeal Board felt that they should disqualify themselves from hearing the appeal before them. No one felt the need to disqualify themselves.

The Secretary then asked Mr. Tallon if they had any objection to any of the Subdivision and Development Appeal Board members. He had none.

The Board members were asked if other than the agenda package provided here today, had any member of the SDAB sought, been given or reviewed evidence prior to the hearing.

Chair Ludwig disclosed the item had come before Council and Council advised Administration obtain a legal opinion.

Michael Keyes, legal counsel for Mr. Tallon asked Chair Ludwig if the legal opinion was in regard to the development.

Chair Ludwig responded the legal opinion was for development without permits and development on the municipal reserve.

Since the legal opinion did not pertain to the development and Chair Ludwig stated he had no bias, Mr. Keyes had no objection to Chair Ludwig hearing the appeal and the hearing continued.

READING OF APPEAL LETTER

The CAO read the appeal written from Mr. Tallon which was received at the office on September 25, 2018 appealing the decision from the Municipal Planning Commission to deny his application for a development permit for construction of two sets of stairs on the property and construction of retaining wall, stairs and deck on the municipal reserve.

JURISDICTION AND DUTIES

Phyllis Forsyth, CAO, provided the Board information on the duties of the Subdivision and Development Appeal Board members and how to determine if they had jurisdiction to hear the appeal.

Chair Ludwig, called for a brief recess to determine jurisdiction.

Determining they had jurisdiction to hear the appeal, the hearing was reconvened.

DEVELOPMENT OFFICER REPORT

Koralyn Lemmon provided the Board with the background information regarding the application.

In August 2017 it was discovered that the larger staircase, as well as retaining walls, stairs and deck on the municipal reserve, were being reconstructed without a permit. In October 2017 Administration received guidance from our legal counsel. Site inspection was then conducted late October 2017 in which the smaller staircase was constructed, without a permit.

After receiving further legal guidance, Administration advised the owner to apply for development permits, in March 2018. At this time a total of \$7500 in penalties were issued for all development contraventions.

On April 20, 2018 the owner applied for the permits and on June 20, 2018 the applications were presented to the Municipal Planning Commission due to:

1. Land located below the top of escarpment/bank shall retain in its natural state, therefore a variance request is required, and Mechanized Excavation, Stripping and Grading is listed as a discretionary use, and stairs may fall under this category. (Stairs Application).
2. Development not in compliance with the Land Use Bylaw, Municipal Development Plan, Sylvan Lake Management Plan, Caring for Shoreline Properties, and the Encroachment Policy. (Reserve Application – see agenda item for details).

The Commission recessed this meeting for further consideration before rendering a decision. On August 27, 2018 the Commission reconvened and decided the following:

1. Deny stairs application as the Land Use Bylaw development application process was not adhered to and Municipal Planning Commission approves or denies the entire application.
2. Deny the application for a retaining wall, stairs and deck on the municipal reserve (Lot R1, Block 1, Plan 2857TR) in front of property at 359 Last Chance Way as it does not comply with statutory plans of the municipality and with the following:
 - a. Previous encroachment agreement remains in effect,
 - b. New additions must be removed,
 - c. Landscaping on reserve must return to natural area with no manicuring as per drawing. Notice of decisions were given to the owner on September 6, 2018.

APPELLANT PRESENTS CASE

Chad Tallon and his legal counsel presented his case to the board.

Mr. Keyes referenced environmental open spaces from the Municipal Government Act sections 664 (1)(2)(3).

Mr. Keyes noted there is no public access to the reserve lands abutting the Tallon's property so no public use is being impeded or adversely affected by the cosmetic improvements made by the Tallon to the elements that existed on the reserve.

History of the property was provided including when the property was purchased by the Tallons and the condition of the property at the time of purchase with photo provided.

Mr. Tallon addressed the Board. The stairs going down to the next level constructed of slate and the retaining walls were constructed by the previous owners. Over time these things became bent and broken. It became an unsafe access to the lake.

Mr. Keyes noted the current shed was approved by the Municipal Planning Commission and the old shed was removed from the reserve land.

The Land Use Bylaw recognizes homeowners adjacent to Environmental Open Space Districts want to enjoy the recreational opportunities that living on the beach provide. The provision of the Land Use Bylaw also provide enough flexibility to find a workable solution for the Tallon's property in its current state.

The Tallons have made the property safe and useful as a beach front

property as characterized in the "accessory use".

The pictures of the property indicate a well-maintained deck and currently no public purpose has been identified. The current development on the reserve is not bothering anyone.

Mr. Tallon spoke to pictures he presented to the board noting the broken stairs that existed when he purchased the property. He pulled the stairs back from the reserve when they were reconstructed so they encroach less than the previous ones did.

Mr. Keyes referenced the current encroachment agreement between the Summer Village and the appellant. Paragraph 8 talks about the reserve being maintained and being kept in good order.

Section 687(3)(c) was referenced regarding the powers of the Subdivision and Development Appeal Board.

A letter prepared by Victor Maris, neighbour, was read in support of the development.

It's not possible or practical to completely "undo" what has been done since 1984. The development does not interfere with the neighbour's use of their property nor does it detract from their property values. The Subdivision and Development Appeal Board should approve the main stairs going from the house to the beach and the stairs next to the deck off the shed as it is not bad planning or non-compliant with the Land Use Bylaw's development standards to have a set of stairs at this location.

The improvements on the reserve should also be approved as the retaining wall is less than 1 meter and has improved the state of the existing retaining wall that existed when the Tallons purchased the property.

Mr. Tallon noted many other properties are similar to his with some building right down to the water.

QUESTIONS FROM THE BOARD

The board members asked questions of the appellant regarding when the sod was laid on the Environmental Open Space.

Mr. Tallon responded the sod was there when he purchased the property. He removed one tree ball and the existing shed from the reserve.

WRITTEN SUBMISSIONS IN FAVOUR OF THE APPEAL

There were no written submission received in favour of the appeal.

COMMENTS IN FAVOUR OF THE APPEAL

No comments were received in favour of the appeal.

WRITTEN SUBMISSIONS IN OPPOSITION OF THE APPEAL

A written submission was received from Patricia Davidson of 361 Last Chance Way noting the impact the development has had on her privacy.

A short recess was taken to allow the secretary to make a copy of the written submission for the Appellant.

Mr. Keyes noted the submission was not relevant to the stairs and the shed is already approved.

COMMENTS IN OPPOSITION OF THE APPEAL

No comments were received in opposition of the appeal.

QUESTIONS FROM THE BOARD

The board had no further questions.

CLOSING COMMENTS FROM THE APPELLANT

Mr. Keyes stated he had summarized his case already and provided no further comments.

CLOSING COMMENTS FROM THE DEVELOPMENT OFFICER

Koralyn Lemmon made her closing comments.

If the Board approves the staircase developments, Administration will then issue a development permit. If the Board approves the reserve developments, Administration will issue a development permit and amend the existing Encroachment Agreement to reflect the current structures. If the developments are denied, then the structures will need to be removed. If the owner fails to abide, Administration will proceed with obtaining a court order at the direction of Council.

CLOSING COMMENTS FROM THE BOARD

Chair Ludwig asked Mr. Tallon and Mr. Keyes if they felt they had an opportunity to present their case. They acknowledged they had.

Chair Ludwig thanked everyone for their attendance and presentations. A written decision of the Board will be made within 15 days.

He declared the hearing closed noting no further information or submissions would be entertained by the board.

PURPOSE OF THE HEARING

The purpose of this hearing is to hear an appeal received on October 22, 2018, from Chad Tallon, appealing the Municipal Planning Commission's decision of October 1, 2018, to deny an amendment to his development permit #161700 to include a deck for the property located at Lot 6, Block 1, Plan 2857TR being 359 Last Chance Way.

IN THE MATTER OF AN APPEAL by the appellant, Chad Tallon appealing the Municipal Planning Commission's decision of October 1, 2018, to deny an amendment to his development permit #161700 to include a deck for the property located at Lot 6, Block 1, Plan 2857TR being 359 Last Chance Way.

BEFORE the Summer Village of Norglenwold Subdivision and Development Appeal Board:

Chairman Jeff Ludwig
Member Allan MacPherson
Member Carol McMillan

THIS IS AN APPEAL ON the Development Authority's decision of October 1, 2018.

UPON NOTICE BEING GIVEN by letter to the appellant and owners of property located within 200' radius of the adjournment for the proposed development on October 24, 2018. On November 13, 2018, the hearing was adjourned at the request of the appellant. Notice was given by letter to the appellant and owners of property located within 200' radius of the adjournment for the proposed development on November 13, 2018.

BACKGROUND

The Subdivision and Development Appeal Board Secretary advised that Chad Tallon filed an appeal against the Municipal Planning Commission's decision of October 1, 2018 an amendment to his development permit #161700 to include a deck for the property located at Lot 6, Block 1, Plan 2857TR being 359 Last Chance Way.

READING OF APPEAL LETTER

The CAO read the appeal written from Mr. Tallon which was received at the office on October 22, 2018 appealing the decision from the Municipal Planning Commission to deny his application for an amendment to his development permit #161700 to include a deck.

DEVELOPMENT OFFICER REPORT

Koralyn Lemmon provided the Board with the background information regarding the application.

In August 2017 it was discovered that the deck was being constructed without a permit. In October 2017 Administration received guidance from our legal counsel. Site inspection was then conducted late October 2017 in which the deck was fully constructed.

On March 6, 2018 Administration mailed a warning letter, requesting the owners to apply to amend the shed development permit. If amendment for the shed is granted, request the owners to amend again for the deck. This was a motion from Council on February 2, 2018, resolution #1562/18.

On June 20, 2018 the shed application was presented to the Municipal Planning Commission with the recommended condition that if approved, the owner to apply to amend permit for the deck. The Commission recessed this meeting for further consideration before rendering a decision.

On August 27, 2018 the Commission reconvened and approved the shed application. Therefore on October 1, 2018 the application for the deck was brought before the Commission due to the following:

1. The deck encroaches 0.20m into the municipal reserve (lot R1, Block 1, Plan 2857TR).
2. Land located below the top of escarpment/bank shall remain in its natural state, therefore a variance request is required.

With the following proposed condition:

1. Deck to be scaled back 0.20m so it does not encroach into the reserve, otherwise the existing encroachment agreement will need to be revised.

The Commission denied the deck application but did not provide a reason. Under section 642 of the Municipal Government Act, the Commission must approve the application with or without conditions or deny the application stating reasons why. This clause is included in every agenda item presented to the Commission. The notice of decision was given to the owner on October 3, 2018.

APPELLANT PRESENTS CASE

Mr. Keyes referenced page 3 of his written submission.

The Municipal Planning Commission denied the application to allow a 0.20m encroachment by the deck onto the reserve on October 1, 2018.

The deck attached to the shed is flush with the shed. The deck does not encroach onto the reserve anymore than the wall of the shed or the eaves of the shed. Development Permit #161700 has already been amended to approve those. This encroachment should be approved by a further amendment to the Encroachment Agreement.

He does not know how this is bad planning or non-compliant with the Land Use Bylaw's development standards to have a deck off the side of a shed.

QUESTIONS FROM THE BOARD

The board members asked questions of the appellant regarding the real property report which does not show further encroachment.

Mr. Keyes asked chair to have the development officer confirm if the development permit and encroachment agreement would be amended should the Board approve.

Mrs. Lemmon acknowledged this is how she would proceed should the application be approved.

WRITTEN SUBMISSIONS IN FAVOUR OF THE APPEAL

There were no written submission received in favour of the appeal.

COMMENTS IN FAVOUR OF THE APPEAL

No comments were received in favour of the appeal.

WRITTEN SUBMISSIONS IN OPPOSITION OF THE APPEAL

There were no written submission received in opposition of the appeal.

COMMENTS IN OPPOSITION OF THE APPEAL

No comments were received in opposition of the appeal.

QUESTIONS FROM THE BOARD

The board had no further questions.

CLOSING COMMENTS FROM THE APPELLANT

Mr. Keyes stated he had summarized his case already and provided no further comments.

CLOSING COMMENTS FROM THE DEVELOPMENT OFFICER

Koralyn Lemmon made her closing comments.

If the Board approves the deck development, Administration will then amend the shed's existing development permit. Proposed condition would be that

the deck is scaled back 0.20m so it does not encroach into the reserve, otherwise the existing encroachment agreement will need to be revised.

If the deck developments is denied, then it will need to be removed. If the owner fails to abide, Administration will proceed with obtaining a court order in order at the direction of Council.

CLOSING COMMENTS FROM THE BOARD

Chair Ludwig asked Mr. Tallon and Mr. Keyes if they felt they had an opportunity to present their case. They acknowledged they had.

Chair Ludwig thanked everyone for their attendance and presentations. A written decision of the Board will be made within 15 days.

He declared the hearing closed noting no further information or submissions would be entertained by the board.

DECISION OF THE BOARD

The Subdivision and Development Appeal Board hereby grants the development permit for the two sets of stairs as the development occurs solely on the applicant's property and does not impact adjacent properties.

The Subdivision and Development Appeal Board approve the application for developments on the Municipal Reserve allowing the lower level retaining walls to remain in place as the Board agrees removal would cause additional issues, with the following conditions:

1. Remove rock beds and plants and revegetate reserve with native grasses and shrubs as per attached diagram.
2. Remove side steps from reserve as per attached diagram.
3. The entire lower level to be "No Mow Zone" as per attached diagram.
4. The owner to replant trees/shrubs on Reserve next to 361 Last Chance Way's property (tall growing variety) to re-establish privacy as per attached diagram.
5. Encroachment Agreement to be amended to include the developments.

The Subdivision and Development Appeal Board uphold the decision made by the Municipal Planning Commission and deny the application for a deck attached to the shed for the following reasons:

1. The deck was constructed prior to obtaining a development permit.
2. The deck encroaches on the municipal reserve.
3. The addition of the deck to the shed gives the illusion of boat house/guest house which is not permitted in the Land Use Bylaw.

DATED AT THE TOWN OF SYLVAN LAKE THIS 11TH DAY OF DECEMBER, 2018.

**THE SUMMER VILLAGE OF
NORGLIWOLD SUBDIVISION AND
DEVELOPMENT APPEAL BOARD**

**Jeff Ludwig
Board Chairman**

